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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,443	05/25/2001	Kelly Gravelle	111039.00216	2653

27557 7590 03/24/2005

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WASHINGTON, DC 20037

EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 03/24/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/864,443
Filing Date: May 25, 2001
Appellant(s): GRAVELLE, KELLY

Michael C Greenbaum
Reg. No. 28,419
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 23, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-5,8-15,17-20, and 23-30, claims 6 and 21, claims 7 and 22, and claims 16 and 31 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,026,375	Hall et al.	2-2000
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Kuykendall, L. "E-Payment reaches the happy meal customer" American Banker, vol166, issue 51, (May 15, 2001), pp. 8-10.

Anonymous, "1998 ITE Transportation Achievement Awards" Institute of Transportation Engineers", vol 68,issue 9, (September 1998), pp. 46-52.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-31 are unpatentable under 35 U.S.C. 103(a) in view of Hall et al. (6,026,375), and further in view of Kuykendall.

In regards to claims 1-31, Hall teaches all the claimed features related to a mobile ordering system that schedules an order over the Internet and allows payment of same for pickup at a prescribed time, but does not specifically mention the features related to the use of a wireless tag. Kuykendall teaches a system that allows a McDonalds customer to pay using California's Fastrak toll- payment transponders. It would be obvious to a person of ordinary skill in the art to include the wireless tags as a payment/arrival indicator as taught by Kuykendall, because this would increase the speed of delivery at the point of pickup.

(11) Response to Argument

Claims 1-5,8-15,17-20, and 23-30

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is clear that Hall recognizes the importance of new technology and would clearly be motivated to combine the Kuykendall reference as is evidenced by the following statements.

"Many technological devices exist today that promise to reduce the amount of time people spend completing routine tasks. Computers, for example,

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increase productivity by automating routine tasks, freeing up time for people to do other things while waiting for the computer to complete the task. New mobile technologies, such as cellular phones, permit people to perform routine tasks, like shopping or ordering meals, while away from home or commuting. The popularity of "drive-thru" services further attests to people's increased mobility and desire to purchase goods and services from their cars.

Today's consumers are increasingly demanding that service providers deliver goods and services with a minimal amount of time spent waiting and often choose to patronize the service provider that promises the quickest response time. Customers traditionally have relied on two methods for reducing time spent waiting to pick up ordered goods: phone-in advance orders and "drive-thru" processes.

The traditional "drive-thru" process is inherently inefficient, however, because customers typically place their orders at the facility and then must wait for the goods to be produced. Efforts to reduce wait time by streamlining the drive-thru process have their own drawbacks and, in addition, only have reduced, but not eliminated, the amount of time the customer waits in line. The three window concept, or one window each for ordering, paying, and pick-up, for example, requires service providers to have more people involved in the ordering process and requires new building construction. Another disadvantage of this solution is that it is not readily adaptable to markets other than fast food meal processes." (col 1, lines 23-54)

Applicant argues that the combination does not teach providing for "identifying a wireless tag identification number corresponding to the identification provided". The examiner disagrees and directs the applicant's attention to Figure 5 and col 8, lines 1-43, lines, which clearly provides a database for correlation between a identification given and a mode of payment, the method of payment being Kuykendall's Fast track toll payment method (see also Anonymous article for a more detailed discussion on toll passes).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971) (See discussion above under suggestion to combine).

Claims 6 and 21

Applicant argues that the combination does not teach "providing a telephone number". The examiner disagrees and directs the applicant's attention to FIG 5 of Hall where the customer provides a telephone number to the system.

Claims 7 and 21

Applicant argues that the combination does not teach providing an identification comprising "providing a personal identification number". Since the applicant does not

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specifically define a “personal identification number” the examiner may use the broadest reasonable definition. With this in mind the examiner directs the applicant’s attention to FIG 5, Credit Card Information, which is a personalized number that can be used to identify a person.

Claims 16 and 31


Applicant argues that the combination does not teach “correlating the red tag identification number with a record of validated tags. The examiner disagrees and notes that each time a car with an “EZ pass” passes through a toll the tag is read and correlated to a user who is billed.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




Mark Fadok
Patent Examiner
March 17, 2005



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20050308

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The examiner notes that the IDS submitted May 15, 2003 by the applicant has been considered and attached for your records. However, it is noted that two of the reference were previously provided by the examiner in a PTO - 892.